

TCEQ DOCKET NO. 2002-1045-AIR-U  
TCEQ Internal Control No. 11282005-D02 (TC)

2007 DEC -3 AM 9:49

CHIEF CLERKS OFFICE

IN THE MATTER OF THE APPLICATION	(	BEFORE THE
OF COUNTY LINE WATER SUPPLY	(	
CORPORATION TO CONVERT TO A	(	TEXAS COMMISSION ON
SPECIAL UTILITY DISTRICT AND FOR	(	
APPROVAL OF AN IMPACT FEE	(	ENVIRONMENTAL QUALITY

PROTESTANT'S REPLY IN SUPPORT OF REQUEST  
FOR HEARING AND MOTION FOR REMAND

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

COMES NOW the S.R. Scott Family LP ("Scott Family"), Protestant in the above-referenced matter, and files this its Reply in Support of Request for Hearing and Motion for Remand, and in support thereof would show as follows:

I.

In a single application, County Line Water Supply Corporation ("County Line") has applied for conversion to a special utility district ("SUD") and for approval of a new impact fee in the amount of \$3,765 per equivalent single-family connection for new connections within or near County Line's service area. Upon conversion to a SUD, an entity must include the information set forth in 30 TAC § 293.11(a) and (h). County Line's application for approval of an impact fee is subject to 30 TAC §§ 293.171-176. County Line's application fails to include the basic requirements for an impact fee application set forth in 30 TAC § 293.172. It is therefore incomplete. The Scott Family has protested County Line's application for this, and other, reasons. It appears that County Line is under the misimpression that the Scott Family has withdrawn its protest on the portion of its application that concerns the conversion to the SUD. It has not; the Scott Family continues to protest County Line's application in its entirety.

## II.

County Line contends that its impact fee application only must comply with § 293.11(h)(8), which provides: "Creation applications for ... Special Utility Districts shall contain items listed in subsection (a) of this section and the following: (8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee...." (*emphasis added*). However, County Line is not requesting approval of an existing impact fee; rather, it is requesting approval of a new impact fee. Accordingly, the provisions of 30 TAC §§ 293.171-176 apply and must be satisfied.

## III.

The attached affidavit of Mickey Fishbeck details the components of an impact fee application that are required by the Commission's rules and that are missing from County Line's application. What is missing are materials required by 30 TAC § 293.172(3), (5), and (6), as set forth below:

(3) a capital improvements plan report prepared, signed, and sealed by a professional engineer registered to practice in the State of Texas and which identifies the proposed capital improvements for which impact fees will be assessed and which shall specifically include the following:

(A) an accounting of the capacity of the existing facilities, the level of current usage, the outstanding capacity commitments, and any unallocated excess capacity. This information should be presented in terms of flows and in terms of connections;

(B) an established land use plan including both the number of connections and the method used in determining the number of connections associated with each category of development;

(C) a map of the service area (on sheets not larger than 24 inches by 36 inches) which clearly:

- (i) indicates the properties against which the impact fees shall be assessed;
- (ii) identifies proposed land uses;

(iii) identifies existing facilities servicing the area including line sizes and approximate peak daily flow capacities; and

(iv) identifies proposed facilities necessary to serve the area including line sizes and approximate peak daily flow capacities;

(5) a table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the commission;

and

(6) a description of the facilities intended to be financed through impact fees and a detailed analysis of all costs required to finance those improvements.

#### IV.

Another basic defect in County Line's application is that its proposed impact fee is based on a replacement cost methodology. Nowhere in the rules is such a methodology authorized. To the contrary, the rules expressly provide that the purpose of an impact fee is to allow a district to "charge ... against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development...." 30 TAC § 293.171(1) (*emphasis added*). In short, the rules require that impact fees be calculated such that the fee accurately reflects the costs attributable to future development. It is obvious that a replacement-cost methodology would not accomplish that goal, and that is no doubt the reason why the rules do not authorize such a methodology.

#### V.

Because County Line's application is defective, this matter should be remanded to the Executive Director with instructions to the Executive Director either to (1) require County Line to amend its application to come into compliance with 30 TAC § 293.172 or (2) dismiss the application if County Line fails to amend its application as instructed by the Commission. It would be inappropriate for County Line's application to proceed where County Line has failed to

provide a substantial amount of information that is required by the rules to be included in an impact fee application and where the methodology employed by County Line to calculate the proposed impact fee has no basis in the rules.

## VI.

At a minimum, the matter should be set for hearing as requested previously by the Scott Family. The Scott Family has demonstrated it is a person affected by the application and its request for hearing was timely filed and substantively sufficient. The Scott Family believes that the information submitted by County Line in support of its application to convert to a SUD is deficient in that it does not comply with the requirements of Chapter 65, Texas Water Code, or 30 TAC § 293.11(a) and (h). As stated above, the Scott Family also believes the information submitted by County Line in support of its proposed impact fee is substantively deficient. Accordingly, in the alternative to a remand, the Scott Family requests a contested case hearing on all issues in County Line's application.


WHEREFORE, PREMISES CONSIDERED, the S.R. Scott Family LP respectfully requests that the Commission enter an order:

1. Remanding County Line's application for conversion to a special utility district and approval of impact fees to the Executive Director with instructions that the Executive Director require County Line to amend its impact fee application to come into compliance with 30 TAC § 293.172, and with further instructions that the Executive Director dismiss that application if County Line fails to amend its application as instructed by the Commission;
2. In the alternative, setting this matter for hearing; and

3. Granting the S.R. Scott Family LP such other relief to which they may be entitled.

Respectfully submitted,

Celina Romero  
John M. Joseph  
CLARK, THOMAS & WINTERS,  
P. O. Box 1148  
Austin, TX 78767  
(512) 472-8800 – Phone  
(512) 474-1129 – Fax

By:   
Celina Romero

**ATTORNEYS FOR  
S.R. SCOTT FAMILY LP**

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been delivered to the following parties by telecopier this 3rd day of December 2007:

FOR THE APPLICANT:

Rolando L. Rios, Attorney  
Rolando L. Rios & Associates, PLLC  
The Milam Building  
115 E. Travis St., Ste. 1645  
San Antonio, Texas 78205-1685  
Telephone: (210) 222-2102  
Fax: (210) 222-2898

FOR THE EXECUTIVE DIRECTOR:

Shana Horton, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P. O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-0600  
Fax: (512) 239-0606

Gregory Charles, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division, MC-152  
P. O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-4638  
Fax: (512) 239-2214

FOR PUBLIC INTEREST COUNSEL:


Scott Humphrey, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P. O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-6363  
Fax: (512) 239-6377

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P. O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-3300  
Fax: (512) 239-3311

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P. O. Box 13087  
Austin, Texas 78711-3087  
Telephone: (512) 239-4000  
Fax: (512) 239-4007



Celina Romero

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AFFIDAVIT OF MICKEY FISHBECK

Before me, the undersigned notary, on this day personally appeared Mickey Fishbeck, a person whose identity is known to me. After I administered an oath to her, the affiant testified under oath as follows:

1. My name is Mickey Fishbeck. I am over 18 years of age. I have never been convicted of a crime, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am Principal with Rimrock Consulting Company in Austin and am a member of the American Institute of Certified Planners. I have substantial experience in impact fee development under Chapter 395 of the Texas Local Government Code and 30 TAC Chapter 293.

3. I have been retained by Clark, Thomas & Winters P.C., counsel for S.R. Scott Family L.P. in this matter, to review the application to convert to a special utility district and for approval of an impact fee that has been submitted by County Line Water Supply Corporation. The application that I have reviewed is, to my understanding, the complete application obtained by Clark, Thomas & Winters from TCEQ staff.

4. The application that I have reviewed is deficient. The application does not seek approval of an existing impact fee under 30 TAC 293.11(h)(8), but rather it seeks approval of a new impact fee. Therefore, the provision of the rules that is pertinent to an impact fee

application in this context is 30 TAC 293.172. That rule provides certain requirements that must be met for an impact fee application to be complete. The application that I have reviewed fails to meet some of those requirements. Specifically, it lacks the following:

(3) a capital improvements plan report prepared, signed, and sealed by a professional engineer registered to practice in the State of Texas and which identifies the proposed capital improvements for which impact fees will be assessed and which shall specifically include the following:

(A) an accounting of the capacity of the existing facilities, the level of current usage, the outstanding capacity commitments, and any unallocated excess capacity. This information should be presented in terms of flows and in terms of connections;

(B) an established land use plan including both the number of connections and the method used in determining the number of connections associated with each category of development;

(C) a map of the service area (on sheets not larger than 24 inches by 36 inches) which clearly:

(i) indicates the properties against which the impact fees shall be assessed;

(ii) identifies proposed land uses;

(iii) identifies existing facilities servicing the area including line sizes and approximate peak daily flow capacities; and

(iv) identifies proposed facilities necessary to serve the area including line sizes and approximate peak daily flow capacities;

(See 30 TAC 293.172(3));

(5) a table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the commission;

(See 30 TAC 293.172(5)); and

(6) a description of the facilities intended to be financed through impact fees and a detailed analysis of all costs required to finance those improvements;

(See 30 TAC 293.172(6)).



M Fishbeck

MICKEY FISHBECK

MICKEY FISHBECK

Sworn to and subscribed before me by ~~28~~ on NOVEMBER 28, 2007.



Christine Hodges

Notary Public in and for  
the State of Texas